

21 C.J.S. Courts § 319

Corpus Juris Secundum | May 2023 Update

Courts

M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc; and Lonnie E. Griffith, Jr., J.D.

IX. Court Commissioners

B. Powers and Immunity

§ 319. Disqualification of court commissioner to act

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Court Commissioners](#)  1, 3 to 5

As in the case of a judge, a court commissioner may be disqualified by interest.

As in the case of a judge, a court commissioner may be disqualified to act by interest.¹ A commissioner may not sign a writ where he or she is a litigant in the action or where he or she has any personal or proprietary interest in the eventual outcome of the dispute.²

A code of judicial conduct stipulating that a judge must avoid the appearance of impropriety and must disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned applies to a court commissioner as an officer performing judicial functions.³ There is authority holding that under such a provision, a trial commissioner must disqualify himself or herself when the commissioner's law partner practices before him or her even though this may have a severe effect in rural communities where it is more likely for a trial commissioner to be associated with other attorneys due to the relatively small number of practitioners in the area.⁴

A court commissioner may be specifically prohibited by statute from acting as a commissioner in any action in which he or she has been engaged, employed, or retained as an attorney.⁵ A master commissioner is not, however, required to recuse himself or herself at the sentencing of a defendant linked to a gang on the ground that the commissioner previously represented another purported gang member where the prior representation was in a prosecution unrelated to the defendant's case and the gang affiliation had no role in that prosecution.⁶

CUMULATIVE SUPPLEMENT

Cases:

Part-time court commissioner's failure to recuse himself in small-claims case or disclose his close friendship with attorney for party constituted willful violations of Code of Judicial Conduct's provision on impartiality, provision on acting in manner that promoted public confidence in integrity and impartiality of judiciary, and provision on upholding integrity and independence of judiciary; between date of pretrial conference and trial, commissioner went on week-long golfing trip overseas with attorney in question, with whom commissioner had been friends for approximately 20 years. [Wis. Stats. § 757.81\(4\)\(a\)](#); Wis. Sup. Ct. R. 60.02, 60.03(1), 60.04(4). [Matter of Disciplinary Proceedings Against Gorski, 2020 WI 5, 937 N.W.2d 609 \(Wis. 2020\)](#).

[END OF SUPPLEMENT]

Westlaw. © 2023 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

- 1 W. Va.—[Stafford v. Mingo County Court](#), 58 W. Va. 88, 51 S.E. 2 (1905).
- 2 Conn.—[Cohen v. Ushinski](#), 36 Conn. Supp. 69, 411 A.2d 597 (Super. Ct. 1979).
- 3 Ky.—[Dixon v. Com.](#), 890 S.W.2d 629 (Ky. Ct. App. 1994).
- 4 Ky.—[Dixon v. Com.](#), 890 S.W.2d 629 (Ky. Ct. App. 1994).
- 5 Wyo.—[In re Adoption of KJD](#), 2002 WY 26, 41 P.3d 522 (Wyo. 2002).
- 6 Ind.—[Blanche v. State](#), 690 N.E.2d 709 (Ind. 1998).